

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

NO. CR. S-03-0060 WBS

Plaintiff,

v.

ORDER

DONALD M. FRIEDMAN,

Defendant.

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Defendant Donald M. Friedman was originally charged in a single count indictment with making threats against federal law enforcement officers in violation of 18 U.S.C. § 115. On July 28, 2003, after conducting a hearing pursuant to 18 U.S.C. § 4241, the court found that although Friedman understood the nature of the proceedings, because of his mental disease he refused to assist rationally or properly in his defense, and was thus incompetent to stand trial. The court accordingly ordered Friedman committed to the custody of the Attorney General for treatment pursuant to 18 U.S.C. § 4241(d). Friedman's appeal from that order was affirmed by the Ninth Circuit. United States v. Friedman, 366 F.3d 975 (9th Cir. 2004).

1 On January 20, 2004, the court denied the Federal
2 Medical Center's request to involuntarily medicate Friedman
3 pursuant to Sell v. United States, 123 S.Ct. 2174 (2003), and
4 ordered him returned to this district. On September 13, 2004,
5 after hearing, the court found that Friedman's mental condition
6 had not so improved, and would not likely so improve, so as to
7 permit him to proceed to trial, and accordingly ordered him
8 committed pursuant to the provisions of 18 U.S.C. § 4246. On
9 October 28, 2004, on the motion of the United States Attorney,
10 because the case could not be brought to trial, the court
11 dismissed the indictment pursuant to Rule 48(a) of the Federal
12 Rules of Criminal Procedure.

13 Friedman now moves, in propria persona, (1) for
14 "Reappointment of Counsel, (2) for "Expungement of Arrest and All
15 Related Proceedings," (3) Appear Telephonically, and (4) for
16 "Emergency Scheduling."

17 I. Motion for Reappointment of Counsel

18 Friedman currently has nothing before this court. All
19 charges against him have been dismissed. There exists no
20 absolute right to appointment of counsel in collateral
21 proceedings such as those contemplated by defendant's other
22 motions. See, e.g., Irwin v. United States, 414 F.2d 606 (9th
23 Cir. 1969).

24 18 U.S.C. § 3006A authorizes the appointment of counsel
25 at any stage "if the interests of justice so require." However,
26 the interests of justice do not so require here. Friedman's
27 moving papers appear to be predicated on the same kinds of
28 delusional arguments which resulted previously in his being found

1 incompetent to stand trial. Accordingly, the court will deny the
2 motion for reappointment of counsel for that purpose.

3 II. Motion for Expungement

4 Friedman argues that the court has ancillary
5 jurisdiction to hear his motion to expunge his arrest and related
6 proceedings. The Supreme Court has instructed that courts may
7 use the doctrine of ancillary jurisdiction "for two separate,
8 though sometimes related, purposes: (1) to permit disposition by
9 a single court of claims that are, in varying respects and
10 degrees, factually interdependent, and (2) to enable a court to
11 function successfully, that is, to manage its proceedings,
12 vindicate its authority, and effectuate its decrees." Kokkonen
13 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 379-80 (1994).
14 The Ninth Circuit has held that the latter purpose--to manage
15 proceedings, vindicate authority, and effectuate decrees--permits
16 a district court to order the expungement of criminal records in
17 cases over which it once exercised jurisdiction. United States
18 v. Sumner, 226 F.3d 1005, 1014 (9th Cir. 2000).

19 Neither of those purposes would be served here.
20 Moreover, to the extent that Friedman's arguments are
21 intelligible, they are based on equitable considerations, which
22 the Ninth Circuit has specifically held do not comport with the
23 second purpose of ancillary jurisdiction. Sumner, 226 F.3d at
24 1014. Friedman has presented no cognizable reason why his arrest
25 and related proceedings should be expunged. There is no reason
26 to expunge the record of the fact that Friedman was arrested, or
27 that he was adjudged incompetent to stand trial. Even if the
28 court had jurisdiction to strike reference to those proceedings

1 from the records, it would not choose to do so. The court will
2 accordingly deny defendant's motion for expungement.

3 Because the court denies Friedman's motion for
4 expungement, there is no need to consider his motions to appear
5 telephonically and for emergency scheduling.

6 IT IS THEREFORE ORDERED that defendant's motions for
7 reappointment of counsel and expungement of arrest and all
8 related proceedings be, and the same hereby are, DENIED.

9 DATED: December 18, 2006

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11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
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